

**DRAFT RULES
OF
TENNESSEE REGULATORY AUTHORITY
UTILITIES DIVISION**

**CHAPTER 1220-4-13
WASTEWATER REGULATIONS**

TABLE OF CONTENTS

1220-4-13-.01	Application and Purpose	1220-4-13-.08	Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment
1220-4-13-.02	Definitions		
1220-4-13-.03	Retention of Records		
1220-4-13-.04	Data to be Filed with the Authority	1220-4-13-.09	Receiverships
1220-4-13-.05	Maps and Records	1220-4-13-.10	Customer Relations
1220-4-13-.06	Adequacy of Facilities	1220-4-13-.11	Customer Billing
1220-4-13-.07	Financial Security	1220-4-13-.12	Denying or Discontinuing Service
		1220-4-13-.13	Reconnection

1220-4-13-.01 APPLICATION AND PURPOSE

- (1) These rules shall apply to public wastewater utilities as defined in these rules and also in Tenn. Code Ann. § 65-4-101.
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority: T.C.A. §65-2-102

1220-4-13-.02 DEFINITIONS

- (1) Authority - Tennessee Regulatory Authority.
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn. Code Ann. § 65-4-201 et seq.
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater facility.
- (4) Local government – any political subdivision of the state of Tennessee, including, but not limited to a county or incorporated municipality.
- (5) Public utility or public wastewater utility - any person, partnership, corporation, company, association, or two or more persons having a joint or common interest that owns, operates, and manages any wastewater system for the public for compensation within the state subject to the jurisdiction of the Authority.
- (6) TDEC – Tennessee Department of Environment and Conservation.
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.

Authority: T.C.A. §§65-2-102 and 65-4-101(6)

1220-4-13.03 RETENTION OF RECORDS

Unless otherwise specified by the Authority, the National Association of Regulatory Utilities Commissioners, or other governmental agency, all records required by these rules shall be preserved for the period of three (3) years. All records shall be kept at the office or offices of the public wastewater utility in Tennessee or shall be made available to the Authority or its authorized representatives upon request.

Authority: T.C.A. §§65-2-102 and 65-4-104

1220-4-13.04 DATA TO BE FILED WITH THE AUTHORITY

The public wastewater utility shall file with the Authority the following documents and information, and shall maintain such documents and information in a current status. Rates, schedules, special contracts, and other charges for and rules and regulations governing wastewater service shall not become effective until filed with and notified as effective by the Authority.

- (1) A copy of the public wastewater utility's tariff as specified in Rule Chapter 1220-4-1-.02 that includes the rates, rules, and terms and conditions, describing the policies and practices in rendering service that conform with all applicable rules and regulations
- (2) Any public wastewater utility desiring to obtain a Certificate of Public Convenience and Necessity (CCN) authorizing such person, firm or corporation to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule Chapter 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the applied for wastewater services. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.
- (3) Before initiation of service, the public wastewater utility shall furnish the Authority with the following:
 - (a) TDEC approval of the wastewater system design.
 - (b) As-Built certification by its design engineer that states that the wastewater system was constructed according to plans and specifications approved by TDEC.
 - (c) TDEC permit for the wastewater system.
- (4) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and requirements established by the Authority.

Deleted: possess a TDEC permit,

Authority: T.C.A. §§65-2-106, 65-2-102, 65-4-104, and 65-4-201

1220-4-13.05 MAPS AND RECORDS

- (1) Each public wastewater utility shall keep on file in its office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service upon its wastewater system, including a statement of time, duration, and cause of such interruptions.

Authority: T.C.A. §65-2-102

1220-4-13-06 ADEQUACY OF FACILITIES

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local governmental agencies to assure, as far as reasonably possible, continuity of service, and uniformity in the quality of service furnished so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to assure safe, adequate and continuous service at all times by appropriate qualified staff and shall make inspections on a regular basis. These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.
- (3) Each public wastewater utility shall provide service in the area described in its CCN within a reasonable period of time. If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, or finds that extension of service to any such customer could be accomplished only at an unreasonable cost and that addition of the designated service area to that of another provider of wastewater services is economical and feasible, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that particular public wastewater utility.
- (4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve, whether or not there has been a demand for such service, within two (2) years after the date of authorization for service to such part, the Authority may require the public wastewater utility to demonstrate either that it intends to provide service in the area or part thereof or that, based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation of authorization or amendment of a CCN.
- (5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.
- (6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn. Code Ann. § 65-2-106 and after notice and an opportunity to be heard.

Deleted: to

Deleted:

Deleted: to

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0", First line: 0"

Authority: T.C.A. §§65-2-102; 65-4-104; and 65-4-203

1220-4-13-07 FINANCIAL SECURITY

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish an acceptable financial security in an amount not less

| than \$20,000 to the Authority using a format prescribed by the Authority prior to providing service to a customer. The public wastewater utility shall ensure that the financial security is maintained in continuous force in conformity to this rule.

- (2) Proof of financial security shall be furnished to the Authority for review and approval as follows:

- (a) The amount of the financial security required by public wastewater utilities holding a CCN at the time these rules become effective shall be one hundred percent (100%) of the gross annual revenue in the most recent UD16 or, if a UD16 has not been filed, the estimated gross annual revenue forecasted in the CCN application submitted to the Authority. A public wastewater utility holding a CCN at the time these rules become effective shall file proof of the required financial security with the Authority seventy-five (75) days after the effective date of these rules.
- (b) Public wastewater utilities submitting their initial application for a CCN shall be required to present to the Authority, prior to approval of this application, proof of financial security in the amount of one hundred percent (100%) of the forecasted gross annual revenue from the wastewater system project(s) submitted in the application for a CCN.
- (c) The Authority shall review each subsequent UD16, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.

Deleted: thirty

Deleted: 30

- (3) Sufficient financial security shall be provided in one of the following manners:

- (a) The financial security may be a bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee.
- (b) Irrevocable letters of credit issued by financial institutions acceptable to the Authority.
- (c) The public wastewater utility shall provide written notification by means of both certified mail (return receipt requested) and regular mail to the Authority and the holder of the financial security at least sixty (60) days prior to any termination action, expiration date for an irrevocable letter of credit that will not be renewed, or the expiration date for a bond of non-perpetual duration that is not to be renewed.

- (4) If the public wastewater utility proposes to post financial security other than that permitted above, a hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule Chapter 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.

- (5) Financial securities required by any local government may be considered by the Authority as fulfilling this financial security obligation. The public wastewater utility

shall file with the Authority evidence of this financial security and a written request that the Authority consider the security as fulfilling Rule Chapter 1220-4-13-.07(2).

- (6) The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on an individual basis.
- (a) Each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the pass-through mechanism. The tariff filing shall contain a price-out calculation (number of customers multiplied by the pass-through mechanism) supporting the amount of increase proposed and the percentage increase this represents. This supporting calculation shall be based on the cost of the financial security to the public wastewater utility, the number of customers forecasted for the ensuing twelve (12) month period of operations, and the current approved monthly customer rates. Where applicable, a separate increase shall be calculated for residential and commercial customers.
- (i) For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.
- (ii) For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff shall be submitted to the Authority with its CCN application.
- (b) On May 1 of each year, each public wastewater utility shall file a tariff with the Authority for its consideration, containing a true-up calculation for the preceding period and updating the financial security pass-through percentage calculation going forward. The tariff filing shall include but not be limited to the following:
- (i) The actual financial security costs for the most recent twelve (12) month period ending December 31. For the first year this rule is in effect and the first year of operations in the case of a new CCN or amended CCN, the true-up calculation shall be based on the actual months the security was in effect.
- (ii) The actual financial security costs collected from its customers during the previous twelve (12) months or part thereof.
- (iii) A true-up calculation to establish the amount of refund or surcharge due to or required from its customers. This residual amount shall be subtracted from or added to the estimated financial security cost for the next twelve (12) month period.
- (iv) The rate adjustments stated as an amount to be reflected in a customer's bill and the corresponding percentage adjustment.
- (7) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness or incapacity, or refuses to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action that may include making a claim against the public wastewater utility's bond or other financial security.

Deleted: increases

Deleted: added to

Deleted: increase

- (8) Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. Public wastewater utility employees having signature authority over such account may be subject to a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (9) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within one year from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of December 31, 2005 to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in subsection (8) of this Rule. The financial condition of any applicant seeking a CCN to provide wastewater service after December 31, 2005 shall be reviewed by the Authority and a determination shall be made regarding the establishment of a reserve/escrow account during the CCN application process. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.

Authority: T.C.A. §§65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305

1220-4-13-.08 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, **ACQUISITION, OR ABANDONMENT**

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person, lessee, trustee, or receiver owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer, merge, terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.
- (3) The Petition filed with the Authority shall include the following:
 - (a) The name, address, and telephone number of the public wastewater utility.
 - (b) The identity of the person(s) to contact regarding the Petition with their address telephone number, and fax number.
 - (c) The location of the public wastewater utility's books and records.
 - (d) The purpose and filing date of the Petition.
 - (e) The proposed effective date of the transaction.

- (f) The name, address, and telephone number of any potential buyer.
- (g) A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.
- (h) A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.
- (i) A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.
- (j) A statement detailing the effect of the transaction upon customers.
- (k) A customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no less than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider of wastewater services. Good cause includes, but is not limited to, evidence that the current provider is no longer providing wastewater service in Tennessee.

Authority: T.C.A. §§65-4-102, 65-4-104, 65-4-112, and 65-4-113

1220-4-13.09 RECEIVERSHIPS

- (1) Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-07(7) above, the funds of that public wastewater utility funds, including escrow accounts, shall be subject to forfeiture in the event that the public wastewater utility goes into receivership or is transferred to another owner for any reason. In addition, after notice and hearing, the Authority may take the following actions through appropriate court action:
 - (a) Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,
 - (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
 - (b) Provide for the appointment of a receiver by the Authority that has demonstrated the ability to:
 - (i) Operate the wastewater system(s) in compliance with law and the Authority's orders; and,

- (ii) Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.
- (2) Before taking such action as provided in subparagraphs (1)(a) and (b), the Authority shall give notice of the hearing to the following:
 - (a) The subject public wastewater utility.
 - (b) Other public wastewater utilities in Tennessee.
 - (c) All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.
 - (d) Holder of the security.
- (3) An order under subparagraph (1)(a) shall provide that:
 - (a) The entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition.
 - (b) The specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.
- (4) An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
 - (a) A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
 - (c) Other incentives to the entity acquiring the subject public wastewater utility.
- (5) If the Authority takes action as provided in paragraph (1) for the appointment of a receiver, the receiver shall:
 - (a) Have the same rights and duties under Tennessee law as a public wastewater utility.
 - (b) Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility:
 - (i) Has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and
 - (ii) Has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.
- (6) The appointment of a receiver shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of wastewater service is available to the customers.

- (7) Upon appointment of a receiver, the Authority shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer to another owner.
- (8) Within thirty (30) days of the appointment of the receiver, the receiver shall file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver.
- (9) The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board.
- (10) The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).
- (11) The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority.
- (12) At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.

Authority: T.C.A. §§65-4-102, 65-4-104, and 65-4-106

1220-4-13.10 CUSTOMER RELATIONS

Each public wastewater utility shall comply with applicable provisions of Rule Chapter 1220-4-3-14 including but not limited to the following:

- (1) Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.
- (2) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints. If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue; the time, date, and action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request at any time within the period prescribed for retention of such records.
- (3) Each public wastewater utility shall, within ten (10) business days after receipt of a complaint forwarded by the Authority, file a written reply with the Authority.
- (4) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
- (5) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13.11 CUSTOMER BILLING

- (1) Before customers are charged for wastewater services, the Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility. All bills for wastewater service shall state how the charge is calculated. The bill form used shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule Chapter 1220-4-3-.16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall avoid sending a customer two successive estimated bills.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at that time. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable justification is shown for the use of a different rate (e.g. high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.
- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which service was not provided. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate. The public wastewater utility may refund the amount owed as credit toward the customer's subsequent bill for service.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule Chapter 1220-4-3-.18. The public wastewater utility shall retain customer billing records for not less than three (3) years

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13.12 DENYING OR DISCONTINUING SERVICE

- (1) No public wastewater utility shall deny or discontinue service to any customer without first providing notice to the customer and diligently trying to induce the customer to comply with its rules and regulations provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule Chapter 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing in a "Subscription Service Contract" that would for the various reasons listed in this part to allow either:

- (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (a) Non-payment for service by a previous occupant of the premises to be served.
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
 - (c) Failure to pay the bill of another customer as guarantor thereof.
 - (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service.

Authority: T.C.A. §§65-4-102 and 65-4-104

1220-4-13.13 RECONNECTION

The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: T.C.A. §§65-4-102 and 65-4-104